11-1800-11388-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate
Appeal of Villa of St. Francis, Inc.

RECOMMENDED ORDER ON CROSS MOTIONS FOR PARTIAL SUMMARY DISPOSITION

The above matter is before Administrative Law Judge Barbara L. Neilson on cross-motions of the parties for partial summary disposition. Robert V. Sauer, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Human Services (the "Department"). Thomas L. Skorczeski, Attorney at Law, Orbovich & Gartner, Chtd., 408 St. Peter Street, Suite 417, St. Paul, Minnesota 55102, appeared on behalf of the Villa of St. Francis, Inc. Oral argument concerning the cross-motions was heard on October 3, 2000, at which time the record regarding the motions closed.

Based upon all of the files and proceedings herein, and for the reasons discussed in the Memorandum below, IT IS HEREBY RECOMMENDED that the Motion of the Department for Partial Summary Disposition be DENIED and that the Motion of the Villa of St. Francis, Inc., for Partial Summary Disposition be GRANTED. IT IS FURTHER ORDERED that a telephone conference call be held on Monday, November 20, at 9:30 a.m., to discuss the status of the remaining issues in this case and establish a hearing or motion briefing schedule. The Administrative Law Judge will plan to initiate the conference call.

Dated: November 8, 2000.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Background

The Appellant, Villa of St. Francis, Inc. (“Villa of St. Francis” or “Villa”), is a non-profit corporation that owns and operates the Villa of St. Francis Nursing Home (“Villa Nursing Home”) in Morris, Minnesota, which at all times relevant to this proceeding was licensed by the State as a 140-bed nursing facility.[1] Villa Nursing Home is certified to participate in Minnesota’s medical assistance program and receives payment from the Department of Human Services (“DHS”) for care provided to residents of that facility who are eligible MA recipients.[2]

Those operating nursing homes in Minnesota may receive reimbursement from the Department of Human Services for allowable costs incurred in providing care to residents under the federal Medicaid Act, 42 U.S.C. § 1396a, the State's Medical Assistance Program, Minn. Stat. §§ 256B.41-.48, and DHS rate-setting rules, Minn. R. 9549.0010 through 9549.0080 (collectively referred to as "Rule 50"). To receive medical assistance payments, nursing homes submit annual cost reports under Rule 50 showing costs incurred during the reporting year, which generally runs from October 1 through the following September 30.[3] DHS auditors perform a desk audit of each cost report submitted. Based upon the costs reported, after any adjustments on desk audit, DHS sets the per diem rates to be effective during a prospective rate year, which runs from the July 1 following the close of the reporting year through the next June 30.[4] The DHS may also perform field audits of the costs reported by facilities. In a field audit, a DHS auditor performs an on-site review of a facility's financial records and other supporting documentation. DHS may, as a result of the auditor's findings, make adjustments, including further disallowances, to the costs that had been allowed on desk audit.[5] Providers may appeal specific audit adjustments after they receive the final rate notice. If the appeal is not resolved informally, the provider may demand a contested case hearing.[6]

The total payment rate set by DHS under Rule 50 is composed of a number of separately-calculated components. The total payment rate is the sum of an operating cost payment rate, a real estate taxes and special assessments payment rate, a property-related payment rate, an equity incentive, and a capital-repair-and-replacement payment rate.[7] In this case, the issue relates to the operating cost payment rate. That rate is comprised of a care-related per diem and an other-operating-cost payment rate.[8] The cost categories that go into the "other-operating-cost" calculation are laundry and linen services, dietary services, housekeeping services, plant operation and maintenance services, and general and administrative services.[9]

Certain provisions of Rule 50 set forth requirements that apply to certain types of costs. At issue in the present appeal is the provision that addresses related organization costs. That provision, which is set forth in Minn. R. 9549.0035, subp. 7, reads in pertinent part as follows:

> **Related organization costs.** Costs applicable to services . . . directly or indirectly furnished to the nursing facility by any related organization are includable in the allowable cost of the nursing facility at the . . . cost incurred by the related organization for the provision of services to the nursing facility if these . . . costs do not exceed the price of comparable services . . . that could be purchased elsewhere. For this purpose, the related organization's costs must not include an amount for markup or profit.
>
> If the related organization in the normal course of business sells services . . . to nonrelated organizations, the cost to the nursing facility shall be the nonrelated organization's price provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales of similar services . . . .

Accordingly, a nursing facility can report the price it paid to a related organization for a service if the organization sells services to nonrelated parties in the ordinary course of business and at least 50 percent of the organization's sales of similar services are to nonrelated parties. This constitutes an exception to the general rule that services purchased from a related organization must be reported at the organization's costs.

The issue in this case is whether the purchased laundry costs reported on the Villa Nursing Home's cost reports fall within the fifty percent exception for related organization purchases under Rule 50. The burden of proof is on Villa to demonstrate by a preponderance of the evidence that the determination of the payment rate is incorrect.[10] Both parties have moved for summary disposition.

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.[11] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.[12] A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.[13] The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.[14] When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.[15] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[16]

Facts

The parties in this case have entered into an extensive Stipulation of Facts. Not all of the stipulated facts will be repeated here. For the purposes of this case, it is important to note the following undisputed facts. The management and operation of Villa of St. Francis Nursing Home, Inc., is controlled by St. Francis Health Services of Morris, Inc.[17] St. Francis Health Services of Morris, Inc., also owned or operated a number of other facilities and business, including two for-profit corporations, Pioneer West of Morris, Inc. ("PWOM"), and Prairie Land Management Services, Inc., both of which merged under the PWOM name in 1995.[18] The parties also stipulated that St. Francis Health Services of Morris, Inc., Villa of St. Francis Nursing Home, Inc., Leisure Hills Health Center, a nursing facility located in Hibbing, and PWOM and its operations were affiliates with respect to each other as that term is defined in Minn. R. 9549.0020, subp. 38(A), and that any transactions between these entities were related organization transactions governed by Minn. R. 9549.0035, subp. 7.[19]

PWOM conducted a number of operations, including a housekeeping services operation, an assisted living facility, and laundry-related operations located at the Villa Nursing Home ("Villa operation"),Prairie Land Laundromat and Car Wash in Morris, Prairie Land Cleaners in Morris, and Benson Laundry and Dry Cleaners in Benson.[20] Services available at the Villa operation included laundering bed linens, bath linens, and

gowns for Villa Nursing Home, Prairie Pines Assisted Living, Stevens Community Medical Center, Swift County Benson Hospital, and University of Minnesota Morris; laundering personal items for residents of Villa Nursing Home and Prairie Pines Assisted Living; and labeling clothing of residents of Villa Nursing Home, Traverse Care Center in Wheaton, and Leisure Hills Health Center in Hibbing.[21] PWOM's Prairie Land Laundromat and Car Wash operation provided personal and "utility" laundry services, along with self-service washers and dryers and a car wash, to customers in the Morris area.[22] PWOM's Prairie Land Cleaners operation provided dry cleaning, washing, and alternation services to customers in the Morris area.[23] PWOM's Benson Laundry and Dry Cleaners operation provided personal and commercial laundry services, dry cleaning services, and self-service washers and dryers to customers in the Benson area. In addition, all rugs rented from any PWOM operation were laundered in commercial washers and dryers at the Benson operation.[24] Each of these operations charged for services it provided based upon differing price lists.[25]

PWOM leased an area in the Villa Nursing Home from which it conducted the Villa operation.[26] The majority of the services normally provided for the Villa Nursing Home were provided in that leased space within the nursing home; however, any laundry services were available on a back-up basis from PWOM's Prairie Land Laundromat and Car Wash or Prairie Land Cleaners locations if equipment failure, staff scheduling problems, or unexpected workloads prevented performing the services at the Villa location.[27] However, neither PWOM nor Villa Nursing Home maintained any records indicating whether such back-up services had ever been needed or provided.[28] After PWOM purchased the Benson Laundromat and Dry Cleaners in 1990, PWOM transferred all commercial linen accounts from the Benson Location to the Villa for laundering and centralized the laundering of rugs rented from any PWOM location at the Benson location.[29]

This contested case proceeding involves adjustments that were made during desk and field audits of Villa for the reporting years ending September 30, 1994, 1995, and 1996. For each of these years, the Villa Nursing Home filed a Rule 50 cost report that reported the laundry service charges paid by Villa Nursing Home to PWOM.[30] The cost reports filed by Villa Nursing Home reported the following costs for laundry services purchased from PWOM: $115,358 for RYE[31] 1994, $120,733 for RYE 1995, and $124,477 for RYE 1996.[32] The costs reported as purchased laundry services were laundry service charges paid by Villa Nursing Home to PWOM and were composed principally of charges for services provided by the Villa operation.[33] The Department desk audited Villa's cost reports in each of these years and concluded that the only "similar services" for the purpose of analyzing Villa Nursing Home's purchases of laundry services from PWOM were those provided at its Villa operation. The desk auditor concluded that Villa Nursing Home's purchases of laundry services from PWOM constituted more than 50% of PWOM's sales of similar services, and made adjustments to the costs reported by Villa Nursing Home for purchased laundry services.[34] The adjustments were made by using a cost-to-revenue ratio to estimate PWOM's costs of providing the services.[35] Villa Nursing Home then appealed the desk audit adjustments, DHS reaffirmed the disallowances, and Villa requested a contested case hearing.[36] In its appeal determinations, the DHS stated that the "laundromats and the car wash are distinct from the laundry services provided in the nursing home and the

revenue from these operations will not be considered in determining whether sales to unrelated parties exceed 50 percent."[37]

In 1996, the DHS conducted a field audit of the long-term care operations of St. Francis Health Services, Inc., including Villa Nursing Home, that formed the basis of the cost reports filed for RYE 1994 and RYE 1995. The field audit included a review of facility records relating to Villa Nursing Home's purchases of laundry services from PWOM. Using PWOM's records of pounds of laundry done by the Villa operation, the field auditor affirmed the desk audit finding that the laundry services purchased by Villa Nursing Home from PWOM comprised more than 50% of PWOM's sales of similar services. The field auditor recalculated the cost to PWOM of providing the laundry services in RYE 1994 and 1995 based upon a cost per pound figure, which resulted in greater disallowances.[38] Villa appealed the field audit adjustments, the Department issued an Appeal Determination reaffirming the adjustments, and Villa filed a request for contested case proceedings.[39] The parties have stipulated to total Villa operation costs for each of the reporting years at issue that are based upon corrected cost calculations and are higher than those used by the field auditor.[40]

The desk audit of Villa Nursing Home's cost report for reporting year ending October 30, 1994, was the first time DHS had adjusted its reported costs of purchased laundry services from PWOM's charges to PWOM's costs based upon the Department's determination that the laundry services purchased by Villa Nursing Home from PWOM constituted more than 50% of PWOM's total annual sales of similar services. On previous desk audits of Villa Nursing Home's cost reports for the reporting years ending October 30, 1991, 1992, and 1993, DHS auditors made no disallowances of the reported costs of purchased laundry services. Moreover, even though one of the issues identified by DHS meriting field audit review of Villa Nursing Home's cost reports for reporting years ending October 30, 1991, and October 30, 1992, concerned Villa Nursing Home's purchases from related parties, DHS auditors did not make any adjustment to the reported costs of purchased laundry services on field audit of Villa Nursing Home's cost reports for RYE 1991 and 1992.[41]

Discussion

As noted above, a special rate-setting provision applies when a nursing home purchases goods or services from a related organization as defined in Minn. R. 9549.0020, subp. 38. In general, goods or services purchased by a nursing home from a related organization must be reported for rate-setting purposes at the "cost incurred by the related organization for the provision of services to the nursing facility" and "must not include an amount for markup or profit." Under the "50% exception," however, when the related organization sells at least half of its "similar services" to *non*related organizations, the nursing home may report the actual charges it incurred for the services it purchased from the related organization.[42] Thus, the proper reporting method turns on whether or not the nursing home's purchases from the related organization amounted to fifty percent or more of the related organization's total annual sales of similar services. The central issue in this case is whether PWOM sold to nonrelated entities at least fifty percent of services similar to those purchased by Villa Nursing Home.

The Department emphasizes that the Villa operation was a large, commercial linen-laundering operation providing bulk laundry services to all of PWOM's large institutional customers and acknowledges that the services provided there to different customers were clearly similar to each other. As a result, DHS argues that the only services similar to those purchased by Villa were the bulk, large-scale laundering performed by the Villa operation. DHS contends that the services provided by the other laundry-related operations of PWOM were not similar to those provided by the Villa operation because (1) bulk commercial laundering is not similar to making coin-operated washers and dryers available to the general public, and (2) the dry cleaning services provided at Prairie Land Cleaners and Benson Laundromat and the personal or utility laundry services performed by Benson Laundromat and Prairie Land Laundromat were generally done on a small scale and charged on a per-item basis. The Department alleges that the mere fact that PWOM grouped the laundromat and dry cleaning operations together with the Villa operation for accounting purposes does not make them similar services. The Department contends that common sense dictates the approach it has taken in this case, and argues that its approach is supported by the rulemaking record and the practicalities of attempting to implement the fifty percent exception in a meaningful way. DHS also argues that its approach reflects a reasonable extension and interpretation of the language of the rule and thus contends that it did not engage in improper unpromulgated rulemaking.

The Department further contends that it is not appropriate to use revenues alone as a method of determining the amount of sales for the purpose of applying the fifty percent exception because a facility could manipulate those revenues by adjusting its prices to ensure that it meets the exception. The Department argues that there is assurance that the costs allowed will be accurate only when the application of the fifty percent exception and calculation of costs are based upon units of service. The DHS points out that the relevant units of service vary in the context of the various laundry-related areas involved in this case. For example, the relevant unit of service for bulk laundering is the weight of the laundry; the relevant unit of service for self-service washers and dryers at laundromats is the number of load cycles; the relevant unit of service for dry cleaning and personal laundry is the number of items cleaned or laundered;[43] and the relevant unit of service for utility laundry is the number of items rented or laundered. The DHS asserts that the inclusion of separate services with disparate units of service within the set of "similar services" would not lead to an accurate determination of whether the costs reported could be allowed at the price paid under the fifty percent exception or an accurate reduction in the amount allowed to the cost to the related party of providing the services. The Department alleges that the wide variety of units of service for the services sold by PWOM and the varying prices charged for the same services show that it is futile to use revenue figures to conduct a meaningful fifty percent exception analysis or calculate costs attributable to the services provided to Villa Nursing Home, and also reinforce that these are not similar services.

In response, the Villa of St. Francis argues that PWOM's laundry business should be viewed as the similar service for rate setting purposes, rather than specific product lines within the laundry business as proposed by the DHS. Villa contends that the Department's interpretation of the phrase "similar services" to mean "identical services" is at odds with the plain meaning of Rule 50 and that the Department is

attempting to apply an invalid, unpromulgated rule. Villa also contends that the Department's determination that the phrase "total annual sales" cannot be determined by the related organization's revenue from sales if its sales resulted from goods or services measured in disparate units of service is based on an unpromulgated and improper rule and would lead to absurd results. Consequently, Villa contends that it is appropriate to include in PWOM's total annual sales of similar services its revenue from its coin-operated laundry operations at Prairie Land Laundromat and Benson Laundromat and Dry Cleaners and its revenues from "washing and drying service" and dry cleaning at all of its sites, including Prairie Land Laundromat, Villa of St. Francis, Prairie Land Cleaners, and Benson Laundromat and Dry Cleaners. During oral argument, Villa conceded that the revenues from taxable vending at either laundromat and the revenues from the Prairie Land Car Wash should not be included because these are not similar services. When all of the laundry-related revenues are included, Villa points out that its purchases from PWOM accounted for only 30-33.5% of PWOM's total annual sales in the years at issue.

The purpose for the general requirement in Rule 50 that purchases from related organizations be reported at the cost incurred by the related organization to provide them was to "prevent the payment of public funds for activities unrelated to resident care" and to assure that the costs reported for purchased services were based on competitive prices.[44] Consistent with these purposes, the fifty percent exception allows facilities to report the price actually paid to a related organization when there is sufficient assurance that the price paid was competitive, i.e., that market forces would have a bearing on the prices charged. To determine whether the rule's fifty percent exception applies, the rule contemplates review of the "total annual sales of *similar services*" (emphasis added). The Administrative Law Judge who issued the rulemaking report relating to the related organization rule stated that, "[i]f a related organization has several different lines of business, such as medical supplies, pharmaceuticals and durable equipment, the 50% standard is designed to apply to each line."[45]

The parties both rely on the ALJ's statement as support for their positions. Villa asserts that PWOM's overall laundry business is a line of business to which the fifty percent exception should be applied, and alleges that "laundry services" are commonly understood to encompass commercial service, self-service machines, and dry cleaning. In contrast, the DHS contends that PWOM's revenues from coin-operated washers and dryers and small-scale personal dry cleaning and laundry should be separated from its revenues from bulk commercial laundering in applying the fifty percent exception. The Department asserts that, under the approach urged by Villa, a nursing home could be the only customer receiving services provided by a particular site of a related organization (so market forces would have no effect on the price the nursing home paid) but still get the benefit of the fifty percent rule if more than fifty percent of the organization's total revenues from all of its laundry-related services were derived from nonrelated parties. The Department thus claims that inclusion of any of PWOM's services other than bulk laundering would be inconsistent with the purpose of the related organization rule and its exception. The Department further contends that the rulemaking record underlying adoption of the corresponding rate-setting rule for intermediate care facilities for the mentally retarded shows that the related organization

provision in Rule 50 was based on concerns that nursing homes and their affiliates were engaged in self-dealing designed to increase rates.

The Department has not adopted any rule defining the phrase "similar services" or "total annual sales" as used in the provision pertaining to related organizations, Minn. R. 9549.0035, subp. 7, nor has it defined the term "laundry and linen services" as used in Minn. R. 9549.0051, subp. 8. The question to be determined is whether the Department's disallowance of the Villa's laundry costs is based upon a permissible interpretation of the rule that is consistent with the rule's plain meaning, or whether the disallowance is based upon an impermissible interpretation of the rule which amounts to the improper promulgation of a new rule.

The term "rule" means "every agency statement of general applicability and future effect . . . adopted to implement or make specific the law enforced or administered by that agency."[46] Rules must be adopted in accordance with the rulemaking requirements of the Minnesota Administrative Procedure Act.[47] An agency interpretation that "make[s] specific the law enforced or administered by the agency" is an interpretive rule that is valid only if promulgated pursuant with the Minnesota Administrative Procedure Act.[48] Administrative rules do not, however, have to specifically address every nuance that might arise in the application of a statute or rule.[49] As a general matter, if an agency's interpretation of a rule is consistent with the rule's plain meaning, or if the rule is ambiguous and the agency's interpretation is longstanding and a reasonable extension of the plain language, Minnesota courts have not found the agency to have promulgated a new rule.[50] Conversely, if the agency's interpretation has not been consistently applied in the past, a court may cite this as an important factor and find it to be an invalid interpretive rule.[51] In addition, if an agency adopts a policy without following the requirements of the Minnesota Administrative Procedure Act and the policy is inconsistent with its rules, the agency's action has been invalidated.[52]

As a threshold matter, there is no evidence, and the Department does not contend, that the approach taken by the Department in this case reflects its long-standing position. The Department indicated in oral argument that the laundry issue has not arisen with respect to providers other than Villa. Moreover, the disallowance with respect to Villa Nursing Home was made for the first time on desk audit of the cost reports for RYE 1994-96. No similar disallowances were made on desk audit of Villa's reported costs of purchased laundry services for RYE 1991-93 or on the field audits completed with respect to RYE 1991-92, even though the field audits were in part motivated by a desire to examine Villa Nursing Home's purchases from related parties.

After careful consideration, the Administrative Law Judge concludes that the Department's interpretation of the language of Minn. R. 9549.0035, subpart 7, to require differentiation among various types of laundry services is not consistent with the plain language of the rule, nor is it necessary to resolve any ambiguity in the rule. The Department's approach constitutes an improper attempt to promulgate a new rule without complying with the Minnesota Administrative Procedure Act, and should be reversed.

The term “similar” is defined in *The American Heritage Dictionary* (2d ed. 1985) to mean “[r]elated in appearance or nature; alike though not identical.” This definition, in accordance with the meaning of the term as used in common parlance, thus does *not* require that the services in question be identical. The Department, in attempting to limit the analysis to commercial laundry, is trying to apply the fifty percent standard to a particular product/service area within PWOM’s laundry line of business and, in essence, requiring that the services be *identical* to those purchased by the related organization. Such an approach is not consistent with the language of the related organization rule.

The Administrative Law Judge agrees that the mere fact that a company groups together certain operations for accounting purposes does not mean that those operations necessarily provide “similar services.” However, in this instance, the PWOM grouping of commercial and personal dry cleaning and laundry operations coincides with the common understanding of “laundry” or “cleaning” services and represents a logical grouping of businesses providing similar services. In addition, these operations were interrelated in the sense that certain items were sent to other locations for handling (e.g., some personal items of Villa Nursing Home residents were dry-cleaned at Prairie Land Cleaners; all rugs rented from any PWOM operation were laundered in commercial washers and dryers at the Benson operation; commercial linen accounts at the Benson operation were transferred to the Villa operation for laundering).[53] Accordingly, the evidence in this record suggests that PWOM was operating one overall laundry business with four locations during the relevant reporting years, not four separate and independent businesses. The mere fact that commercial customers of Benson Laundromat were transferred to the Villa operation after the Benson Laundromat was purchased by PWOM does not, as the Department contends, demonstrate that “PWOM itself recognized that the services required by those clients were different from those that it intended to provide at the Benson Laundromat.” Rather, it supports the view that the Villa operation was part of a comprehensive laundry/dry cleaning business and was simply the site that was best-suited to handle commercial bulk laundry.

The Administrative Law Judge also is not convinced that the use of differing price lists for personal cleaning services as opposed to commercial cleaning services is relevant in determining that the services offered are not similar, or that the analysis of services provided for purposes of the application of the fifty percent rule should differ from the analysis that would be used if goods had been provided. The related organization rule specifies that the fifty percent standard is met when “sales to nonrelated organizations constitute at least 50 percent of total annual sales of similar services." Although the rule language contemplates an examination of “total annual sales,” that term is not defined in Rule 50. The term “sales” is defined in *The American Heritage Dictionary* (2d ed. 1985) to mean “activities involved in selling goods or services” or “*gross receipts*” (emphasis added). The Department’s interpretation of the rule presumes that it is not proper to determine a related organization’s “total annual sales” based on its total revenue from sales if the sales resulted from services that were measured in disparate units. Instead, the Department urges that the analysis focus on whether the organization’s sales to nonrelated organizations constituted at least 50 percent of the total quantity of each type of item sold, by relevant unit. The Department’s interpretation does not correspond with the plain meaning of “total annual

sales" and is not a logical extension of that rule language. Because it is apparent based upon revenue figures that PWOM's sales to nonrelated organizations constituted at least fifty percent of total annual sales of similar services, the disallowance was not warranted. It is unnecessary to consider in the context of this case the proper methodology to calculate the actual cost to PWOM of the services provided.

The expenses of Prairie Land Laundromat and Car Wash, Benson Laundromat and Dry Cleaners, and Prairie Land Cleaners in 1994-96 exceeded their revenues, and they experienced losses in those years, but the Villa operation was profitable. The Department contends that it is not consistent with the purpose of Rule 50 "to use the operation of businesses not related to resident care at a substantial loss as the basis for substantially marking up the costs charged by a related organization to a nursing facility." Corrected Reply Brief at 14. The Administrative Law Judge finds that there is no sufficient basis in the record of this case for the Department's assertion in this regard. Moreover, because the record does not contain any information concerning the cost to the Villa Nursing Home for laundry-related services when it was operating an in-house laundry in years prior to the years at issue in this proceeding, there is no adequate support for the Department's contention that the Villa Nursing Home purchased laundry services from PWOM at a higher cost than it previously incurred when it did its own laundry.

Moreover, the fact that PWOM charged the Villa Nursing Home something more than its costs is contemplated by the related organization rule. That rule expressly allows a facility to claim amounts in excess of the related organization's actual costs as long as the fifty percent standard is met. If the DHS believes that a claimed amount is unreasonably inflated, it appears that the Department could assert that a disallowance is warranted based upon a violation of the Rule 50 general cost principles.[54] That rule requires that costs be what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction" and specifies that "the cost effects of transactions that have the effect of circumventing these rules are not allowable under the principle that the substance of the transaction shall prevail over form." It would, in the view of the Administrative Law Judge, be more appropriate for the Department to proceed on that basis rather than seek to interpret the related organization rule in the manner urged in this proceeding.

Therefore, the Administrative Law Judge recommends that the Department's determination that only laundry services provided at PWOM's Villa site qualify as "similar services" for purposes of applying the fifty percent exception should be reversed. Genuine issues of material fact exist as to the remaining issue in this case involving space rental. A conference call has been scheduled for Monday, November 20, at 9:30 a.m., to discuss the status of the remaining issues in this case and establish a hearing or motion briefing schedule.

B.L.N.

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[1] Stipulation of Facts ¶3.
[2] Stip. ¶8.

[3] Minn. R. 9549.0041, subp. 1; Stip. ¶11.
[4] Minn. R. 9549.0020, subp. 19, and 9549.0041; Stip. ¶12.
[5] Stip. ¶ 13.
[6] Minn. Stat. § 256B.50, subds. 1b, 1h.
[7] Minn. R. 9549.0070, subp. 1; Minn. Stat. § 256B.431, subds. 15 and 16.
[8] Minn. R. 9549.0056, subp. 5.
[9] Minn. R. 9549.0051, subp. 8.
[10] Minn. Stat. § 256B.50, subd. 1c(d).
[11] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1995); *Louwgie v. Witco Chemical Corp*., 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. Rules, 1400.5500K; Minn.R.Civ.P. 56.03.
[12] *See* Minn. Rules 1400.6600 (1998).
[13] *Illinois Farmers Insurance Co. v. Tapemark Co*., 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).
[14] *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).
[15] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).
[16] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250-251 (1986).
[17] Stip. ¶4.
[18] Stip. ¶5.
[19] Stip. ¶7.
[20] Stip. ¶6.
[21] Stip. ¶14.
[22] Stip. ¶19. The parties stipulated that "[u]tility laundry generally consisted of laundering linens and rental items, or anything other than personal clothing. *Id*.
[23] Stip. ¶22. Although some personal items of Villa Nursing Home residents were dry-cleaned at Prairie Land Cleaners, these costs were not included on Villa's cost reports and are not at issue in this matter. Stip. ¶25.
[24] Stip. ¶26.
[25] Stip. ¶¶ 16, 20, 23, 28; Ex. 1.
[26] Stip. ¶14.
[27] Stip. ¶¶32-33.
[28] Stip. ¶ 33.
[29] Stip. ¶¶26-27.
[30] Stip. ¶¶30-31.
[31] "RYE" means "reporting year ending September 30" of the rate year indicated.
[32] Stip. ¶¶30-31.
[33] Stip. ¶32. The amount reported as purchased laundry services may have included payments by Villa Nursing Home t6o PWOM for dry cleaning of facility drapes at its Prairie Land Cleaners operation. Stip. ¶34.
[34] Stip. ¶¶36-37.
[35] Stip. ¶¶37.
[36] Stip. ¶38.
[37] *See* Notice of and Order for Hearing, Ex. 2 at 6 and Exs. 1 and 6.
[38] Stip. ¶¶40-44.
[39] Stip. ¶45.
[40] Stip. ¶18.
[41] Stip. ¶¶46-49.
[42] Minn. R. 9549.0035, subp. 7.
[43] Although some of the personal laundry may have been charged for on a per-pound basis, PWOM apparently kept no records that would indicate what that proportion had been. Department's Memorandum at 26.
[44] *See* Statement of Need and Reasonableness at 22 (Attachment 1 to Department's Memorandum in Support of Motion) (hereinafter referred to as "SONAR"), and Rulemaking Report of the Administrative Law Judge at 20 (Attachment 2 to Department's Memorandum in Support of Motion) (hereinafter referred to as "Rulemaking Report").
[45] Rulemaking Report at 34.

[46] Minn. Stat. § 14.02, subd. 4 (1998).
[47] Minn. Stat. § 14.05, subd. 1 (1998).
[48] *Mapleton Community Home, Inc. v. Minnesota Dept. of Human Services*, 391 N.W.2d 798, 801 (Minn. 1986).
[49] *See, e.g., Elim Homes, Inc. v. Minnesota Department of Human Services*, 575 M.W.2d 845, 848 (Minn. App. 1998) (Court of Appeals upheld the Department's interpretation of a statute where the interpretation did not "stray from the plain language of the statute, but rather [was] a reasonable extension and interpretation of the language").
[50] *Cable Communications Board v. Nor-West Cable Communications Partnership*, 356 N.W.2d 658, 667 (Minn. 1984), *citing White Bear Lake Care Center, Inc. v. Minnesota Department of Public Welfare*, 319 N.W.2d 7, 8 (Minn. 1982); *Elim Homes*, 575 N.W.2d at 849. .
[51] *Wenzel v. Meeker County Welfare B*d., 346 N.W.2d 680, 683-684 (Minn. App. 1984).
[52] *Elim Homes,* 575 M.W.2d at 848 (Minn. App. 1998).
[53] Stip. ¶¶25-27.
[54] Minn. R. 9549.0035, subp. 8.